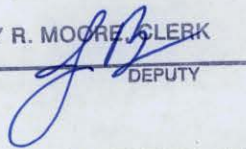


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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAKE CHARLES DIVISION

DARWIN GAUTHIER

Plaintiff

V.

**ALLEN CORRECTION CENTER
MEDICAL DEPARTMENT, ET AL.**

Defendants

* **CIVIL ACTION NO. 2:12-CV-535**

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JUDGE MINALDI

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MAGISTRATE JUDGE KAY

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MEMORANDUM RULING

Before the court is the Report and Recommendation [Doc. 20] of the Magistrate Judge recommending that the plaintiff's Complaint [Doc. 1] be dismissed, with prejudice, as frivolous and for failing to state a claim pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B), to which the plaintiff has filed Objections [Docs. 22 & 25]. For the reasons stated in the Report and Recommendation [Doc. 20], the plaintiff's Complaint [Doc. 1] be and hereby is **DISMISSED, WITH PREJUDICE**, and the court writes briefly only to address the plaintiff's request to amend his complaint.¹

The Federal Rules of Civil Procedure permit a party to amend a pleading with either the consent of the other party or leave of court. FED. R. CIV. P. 15(a). "While leave to amend must be freely given, that generous standard is tempered by the necessary power of a district court to manage a case." *Tuft v. Texas*, 410 Fed. Appx. 770, 773 (5th Cir. 2011) (citing *Shivangi v. Dean Witter Reynolds, Inc.*, 825 F.2d 885, 891 (5th Cir. 1987)). While it is generally improper "for a district court to dismiss a *pro se* complaint without affording the plaintiff the opportunity to amend . . . any such error may be ameliorated if the plaintiff has pleaded his best case." *Cobb v.*

¹ See Objections [Doc. 22], at 6.

Simmons, 373 Fed. Appx. 469, 470 (5th Cir. 2010) (internal citations omitted). Furthermore, “it is within the district court’s discretion to deny a motion to amend if it is futile.” *Washington v. Weaver*, No. 08-30392, 2008 U.S. App. LEXIS 25996, at *4 (5th Cir. Nov. 20, 2008) (citation omitted).

The instant plaintiff’s Complaint [Doc. 1] was filed on February 23, 2012. On July 23, 2012, the Magistrate Judge granted² the plaintiff’s Motion to Amend [Doc. 9], and an Amended Complaint [Doc. 11] was entered into the record. On January 21, 2013, the Magistrate Judge granted³ the plaintiff’s second Motion to Amend [Doc. 12], and a second Amended Complaint [Doc. 15] was entered into the record. Thus, the plaintiff has already been granted multiple opportunities to amend his complaint. Moreover, each amended complaint sets forth essentially the same factual allegations as the original complaint. Under the circumstances, the court finds that the plaintiff has set forth his best case, and further amendment would be futile. Accordingly,

IT IS ORDERED that the plaintiff’s request to further amend his complaint be and hereby is **DENIED**.

IT IS FURTHER ORDERED that, for the reasons stated in the Report and Recommendation [Doc. 20], the plaintiff’s Complaint [Doc. 1] be and hereby is **DISMISSED, WITH PREJUDICE**.

Lake Charles, Louisiana, this 28 day of July, 2014.


PATRICIA MINALDI
UNITED STATES DISTRICT JUDGE

² See Electronic Order [Doc. 10].

³ See Electronic Order [Doc. 14].